is needed, with the requirement that states may not offer discriminatory solutions.[245] These parties also note that other states, such as California, Illinois, and Missouri have implemented grandfathering policies.[246] AT&T asserts that the Commission should clarify that states may not require mandatory takebacks as part of an NPA split, but at a minimum, should clarify that state commissions may rely on voluntary number givebacks, rather than requiring wireless customers to switch their numbers to the new NPA when a split plan is implemented.[247] PageNet asserts that because there is no justification for prohibiting grandfathering, requiring mandatory takebacks of wireless numbers would conflict with section 201(b) of the Communications Act.[248]

64. Parties state that allowing grandfathering for existing wireless customers will be pro-competitive because customers and companies will avoid the expense associated with reprogramming cellular handsets to accommodate a split.[249] In addition, parties argue that consumers will not be confused about the location of cellular telephone customers because existing wireless customers are mobile and do not have a fixed geographic base.[250] AT&T notes that, without grandfathering, some wireless customers will be forced to change their NPAs and their 7-digit numbers if a takeback of numbers is ordered. If the wireless carrier cannot obtain a NXX in the new NPA that is identical to the NXX assigned to it in the old NPA, wireless customers reassigned to the new NPA could be forced to change their NXX as well as their area code.[251] Commenters also state that there is no technical reason to force wireless customers to change their numbers.[252] SWBMS argues that states should not be precluded under a guise of

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[245] BANM MDPU Comments at 2-4.

[246] TCG MDPU Comments at 8; BANM MDPU Comments at 9-10; NECTA MDPU Comments at 9-10; AirTouch MDPU Comments at 5-6.

[247] AT&T MDPU Comments at 2.

[248] PageNet MDPU Comments at 4.

[249] TCG MDPU Comments at 1; BANM MDPU Comments at 7-9; NECTA MDPU Comments at 11-12; SWBMS MDPU Comments at 5; AT&T MDPU Comments at 3; AirTouch MDPU Comments at 3; PageNet MDPU Comments at 2-3.

[250] TCG MDPU Comments at 1-2; NECTA MDPU Comments at 12; SWBMS MDPU Comments at 7-9; AT&T MDPU Comments at 3; PageNet MDPU Comments at 2.

[251] AT&T MDPU Comments at 4.

[252] PageNet MDPU Comments at 3-4. Voluntary conversion of Type 2 numbers is likely to lead to a level of number relief comparable to what would occur with a mandatory takeback of those numbers. *See also* AT&T MDPU Comments at 5-6 (a system of voluntary give-backs can be an effective part of NPA relief efforts because customers in the new NPA with wireless and wireline telephones will choose to change their wireless area codes to avoid

"technology-blind" area code relief from decreasing the burdens associated with area code relief for some carriers while not increasing the burden on any other customer or carrier. SWBMS also argues that states should implement options, such as grandfathering, that lessen the burdens for some while not disadvantaging others.[253] Further, SWBMS states that voluntary grandfathering allows states to let customers decide whether the old or new area code best suits their needs.[254] NECTA states that the class of grandfathered customers could be drawn narrowly to focus specifically on the customers facing the heaviest burdens without grandfathering.[255]

65. SWBMS also argues that the methods for returning wireless numbers in the absence of grandfathering are impractical. First, if numbers are returned based on the billing address, the same group of consumers is burdened twice. Most wireless customers also have wireline telephones. SWBMS asserts that it does not make sense to tell a wireline customer whose NPA is changing that he will be additionally burdened by having a new NPA for his wireless telephone.[256] Also, SWBMS states that because the NPA boundary lines are based on wireline exchange boundaries and numbers out of wireless NXXs are not assigned to a specific geographic area, wireless carriers have customers on both sides of the NPA boundary. Therefore, returning wireless numbers based on the billing address will not "empty" any NXXs and therefore does not contribute to NPA relief.[257] Second, SWBMS maintains that it would be "arbitrary" to mandate that wireless carriers return a set number of NXXs.[258] Third, SWBMS argues that returning NXXs based on the location of the tandem or the end office results in an "all or nothing" situation. Whether the particular tandem is within the old or the new area code will be critical in determining how many of the wireless carriers' customers have to change numbers, and could result in a competitive disadvantage if the carriers are not taking their blocks from the same tandem. Also, often the local exchange company may use the same tandem to support the old and new area codes.[259]

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confusion).

[253] SWBMS MDPU Comments at 4; *see also* PageNet MDPU Comments at 7 (grandfathering does not harm any other segment of the industry); AT&T MDPU Comments at 2 (a technologically neutral policy is commendable, but inherent differences between wireline and wireless telephones make treating them in the same manner unfair).

[254] *Id.* at 11.

[255] NECTA MDPU Comments at 12-13.

[256] SWBMS MDPU Comments at 10; *see also* AirTouch MDPU Comments at 8.

[257] *Id.*

[258] *Id.*

[259] *Id.*

66. BANM argues that grandfathering does not create discrimination against a particular service and that the concerns raised by the overlay area code relief plans considered in the *Ameritech* decision and the *Local Competition Second Report and Order* are not present with grandfathering because both wireless and wireline customers would share the new and old area codes.[260] NECTA agrees that grandfathering of wireless numbers does not result in an overlay and that the plan does not violate the *Local Competition Second Report and Order*[261] because NPAs are not limited to a single form of telecommunications technology or service under the grandfathering plan. SWBMS states that 10-digit dialing should not be required because grandfathering will not confer a competitive advantage that any group must overcome.[262] SWBMS adds that, practically, 10-digit dialing will be required for all calls between area codes.[263] To require 10-digit dialing for other calls would merely create unnecessary burdens.[264]

67. Some parties oppose grandfathering of existing wireless customers. NYNEX supports an all-services area code overlay and argues that grandfathering of wireless numbers in a geographic split plan is equivalent to an overlay (because the new NPA would be "overlaid" by wireless customers retaining the old area code) and therefore requires 10-digit dialing.[265] Also, NYNEX argues that the overlay is a service-specific overlay because only existing wireless customers would be allowed to retain their existing 10-digit numbers with the old area code. NYNEX asserts that if a service-specific overlay approach were adopted, either: (1) wireline customers that share Type 1 NXXs with wireless customers would retain the existing area code along with the wireless customers; or (2) wireline customers that share Type 1 NXXs with wireless customers would undergo a 10-digit number change to remove them from the affected NXX. NYNEX maintains that neither option is palatable.[266] NYNEX and TPI also assert that

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[260] *Id.* at 5-6; *see also* PageNet MDPU Comments at 6. PageNet asserts that allowing grandfathering is consistent with the Commission's pro-competitive goals. Under a geographic split plan permitting grandfathering, new entrants will still have access to old and new numbers on a first come, first served basis, and no carriers will be forced to compete only with the less familiar numbers.

[261] NECTA MDPU Comments at 8.

[262] SWBMS MDPU Comments at 13.

[263] *Id.*

[264] SWBMS MDPU Comments at 13; *see also* AT&T MDPU Comments at 6; AirTouch MDPU Comments at 7-8; PageNet MDPU Comments at 6-7 (since grandfathering does not harm competition, there is no reason to impose 10-digit dialing); PageNet MDPU Comments at 3-4 (no 10-digit dialing required in a geographic split plan).

[265] NYNEX MDPU Comments at 3; *see also* Sprint MDPU Comments at 2-3.

[266] *Id.* at 4.

grandfathering would create customer confusion.[267] Sprint argues that allowing grandfathering gives wireless carriers an advantage because customers will be unlikely to change carriers if they are allowed to retain their NPA.[268]

68. We deny petitioners' requests for reconsideration of our decision in the *Local Competition Second Report and Order* not to prohibit takebacks of wireless numbers. Further, we are not considering petitions filed regarding issues raised in this docket concerning the Texas area code relief plan. Subsequent actions by the Texas Commission have rendered these issues moot.[269] We understand commenters' concerns regarding the burdens associated with reprogramming wireless equipment. We also recognize that our decision to leave this implementation detail to state commissions could result in some wireless number changes that are not technically necessary. We continue to believe, however, that, under these circumstances, states are best equipped to determine how the burdens associated with area code relief are most equitably distributed among various telecommunications services providers operating within their borders.[270] That determination would include whether takebacks of wireless numbers should occur. State commissions may also implement voluntary wireless number give-backs or grandfather wireless numbers, subject to certain guidelines specified below, if they find from their examination of the particular local circumstances that to do so will equitably distribute the burdens of area code relief.[271] As we stated in the *Local Competition Second Report and Order*, our goal is to have technology-blind area code relief that does not burden or favor a particular technology. We emphasize that, although we have delegated authority to states to implement new area codes, state commissions must implement area code relief plans that are consistent with the goal of technology-blind area code relief, the guidelines set out in the *Ameritech Order*, and our area code relief regulations as defined in the *Local Competition Second Report and Order*.[272] Parties alleging that a particular area code relief plan discriminates unreasonably against a

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[267] *Id.* at 5.

[268] Sprint MDPU Comments at 2.

[269] The Texas Commission ultimately determined not to institute any wireless-only overlays, did not require wireless takebacks, and affirmed its prior determination regarding the area code relief plans for the Dallas and Houston areas, *see Remand of the Commission's Decision in Docket No. 14447*, Docket No. 16910, February 6, 1997. This docket is not the proper forum for comments concerning other issues decided in that order by the Texas Commission. Such issues should be brought before the Texas Commission.

[270] *Local Competition Second Report and Order*, 11 FCC Rcd at 19512 ¶ 272.

[271] Factors that states might consider include the number of wireless customers affected, the location of wireless customers, and the type of interconnection the wireless carriers are using.

[272] *Local Competition Second Report and Order*, 11 FCC Rcd at 19516-19 ¶¶ 281-289.

particular industry segment, or otherwise is inconsistent with our guidelines and regulations, may file a petition for declaratory ruling with the Commission under section 1.2 of our rules.[273]

69. We will not disturb the DPU's decision to allow grandfathering of Type 2 wireless numbers. We have delegated authority to the states to implement new area codes, and this particular implementation detail is best left to the state commissions. State commissions are better situated than we are to determine what type of area code relief should occur and precisely how it should be implemented in a particular state. As noted above, state commissions should craft area code relief plans, including the treatment of wireless numbers, with the goal of equitably distributing the burdens associated with area code relief over all segments of the telecommunications industry. The record in this proceeding indicates that grandfathering is most feasible for Type 2 numbers because the sharing of NXX codes between wireless and wireline carriers with Type 1 interconnection creates technical difficulties with grandfathering Type 1 numbers. Therefore, the following discussion refers only to Type 2 numbers.

70. Grandfathering wireless numbers raises concerns about its possible negative impact on number conservation. Because the rate of NXX code assignments directly correlates to the rate of area code changes, we must balance the need to maintain efficient administration of numbering resources against the goal of equitable distribution of the burdens within area code relief plans. If state commissions allow wireless carriers to grandfather numbers of existing wireless customers in a geographic split, they must also allow the carriers to continue assigning unused numbers from the old NPA-NXX (i.e., numbers from the "grandfathered" NXXs). Permitting wireless carriers to continue to assign numbers to new customers out of NXX codes in the old NPA avoids the prospect of leaving numbering resources stranded in the grandfathered NXX code. Wireless carriers should fully use these numbering resources prior to obtaining additional numbering resources from the new NPA.

71. We recognize that allowing wireless grandfathering results in the functional equivalent of a service-specific overlay in the new NPA.[274] The overlay, however, is limited to existing wireless customers in the new NPA, plus any additional new wireless customers that may "fill up" the grandfathered wireless NXXs. This limitation reduces the competitive concerns associated with a technology-specific overlay. State commissions should, however, consider those competitive concerns when crafting area code relief plans, and balance them against the convenience wireless carriers gain through grandfathering of wireless numbers. We emphasize again that burdens associated with area code relief should be equitably distributed among all segments of the telecommunications industry.

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[273] 47 C.F.R. § 1.2.

[274] We have announced our intent to reexamine the prohibition against technology-specific overlays in the *Numbering Resource Optimization Notice*, at ¶¶ 256-261.

B. Discriminatory NXX Code Opening Charges

1. *Background*

72. We observed, in the *Local Competition Second Report and Order,* that charging different "code opening" fees for different providers or categories of providers of telephone exchange service violates the section 251(b)(3) nondiscrimination requirement and the section 202(a) prohibition of unreasonable discrimination.[275] In addition, we concluded that charging different "code opening" fees constitutes an "unjust practice" and "unjust charge" under section 201(b).[276] Further, we found the practice inconsistent with the principle stated in section 251(e)(1) that numbers are to be available on an equitable basis.[277] We also stated that incumbent LECs must treat other carriers as the incumbent LECs would treat themselves. We therefore extended the prohibition against LECs charging discriminatory fees for numbering to cover charges to paging companies.[278]

2. *Discussion*

73. AT&T, AirTouch, PageNet, TCG, and PCIA allege that incumbent LECs serving as code administrators charge widely varying NXX code[279] opening fees.[280] These parties request that the Commission limit such fees to forward-looking costs that would be borne by any neutral third party acting as numbering administrator.[281] TCG and BellSouth report that code assignment charges are assessed by NXX code administrators to recover the administrative costs of physically processing NXX code assignment requests and assigning NXXs to carriers.[282] AT&T and TCG assert that incumbent LECs should not charge carriers receiving NXX codes for costs that

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[275] 47 U.S.C. § 251(b)(3); 47 U.S.C. § 202(a); *Local Competition Second Report and Order*, 11 FCC Rcd at 19537 ¶ 332.

[276] 47 U.S.C. § 201(b); *Local Competition Second Report and Order*, 11 FCC Rcd at 19538 ¶ 332.

[277] 47 U.S.C. § 251(e)(1); *Local Competition Second Report and Order*, 11 FCC Rcd at 1958 ¶ 332.

[278] *Local Competition Second Report and Order*, 11 FCC Rcd at 19538 ¶ 333.

[279] NXX codes are defined *supra* at ¶ 5.

[280] AT&T Petition at 10-11; AirTouch Opposition at 13-14; PageNet Opposition at 9; TCG Opposition at 10-11; PCIA Opposition at 7-8.

[281] *Id.*

[282] BellSouth Reply 2-3; TCG Opposition at 10.

incumbent LECs incur to route traffic to new NXX codes because every carrier that interconnects with the LEC to which the new NXX is assigned must also modify its own network switches to recognize the new code.[283] Agreeing, BellSouth advises that it does not intend to charge other carriers for "code opening" costs that BellSouth incurs to modify its network to recognize new or modified NXX codes.[284] BellSouth, however, contends that the Commission should state that LECs can recover costs incurred to maintain numbering information in the Routing Data Base System (RDBS) and Bellcore Rating Input Database System (BRIDS) and for assuming Administrative Operating Company Number responsibilities.[285] GTE states that it does not charge other carriers for the hardware and software required to open a new NXX but rather charges other carriers only the actual costs it incurs to "cover the administrative costs of adding new capacity."[286]

74. AT&T further urges us to require that incumbent LECs charge themselves retroactively for every NXX code that they have previously allocated to themselves at the same rate that they have charged their competitors for the distribution of NXXs.[287] BellSouth asserts that the Commission does not have the authority to apply such a regulation on a retroactive basis and requests that the Commission deny AT&T's request.[288] PTG also seeks to deny AT&T's proposal noting that section 251(e) of the Act establishes that telecommunications numbering administration costs should be borne by all telecommunications carriers on a competitively neutral basis and should not be allocated on costs to a hypothetical third party.[289] U S WEST contends that costs associated with opening a new NXX code should be assessed to the carrier seeking assignment of the new code while costs associated with code administration should be levied uniformly upon all code users through a general administration fee.[290]

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[283] AT&T Petition at 11; TCG Opposition at 11.

[284] BellSouth Reply at 5.

[285] BellSouth Petition at 9; BellSouth Reply at 4-5.

[286] GTE Opposition at 16.

[287] *Id.*

[288] BellSouth Opposition at 4.

[289] PTG Opposition at 5.

[290] U S WEST Opposition at 9-10.

75. Certain parties state that incumbent LECs are assessing unreasonable, unjust, or discriminatory charges for functions associated with NXX code administration.[291] Noting that wireless carriers utilize numbers that require Type 1 or Type 2 interconnection, Arch contends that many LECs charge wireless carriers exorbitant fees to issue and maintain numbers. Because Type 2 numbers reside in the switch of the wireless carrier, and because LECs do not maintain those numbers, Arch maintains that LECs incur no costs to justify their charges. In addition Arch argues that, although LECs must input Type 1 numbers into their switch software, these costs are *de minimis*.[292] AirTouch compares the rates charged to open NXX codes in different NPAs and argues that incumbent LECs seem to base code opening fees upon market demand for NXXs and not administrative costs. In support of this argument, AirTouch observes that Pacific Bell charged AirTouch $9,400 to open an NXX in the 909 NPA and $30,600 to open an NXX in the 818 NPA.[293] Arch reports that the Rochester Telephone Corporation charged it a recurring charge of $12.36 for a block of 100 numbers, a charge that Rochester Telephone states is for use of its "DID facilities."[294] Arch asserts that the charge should not be permitted because it is a "recurring charge solely for the use of numbers."[295] AT&T requests us to ensure that incumbent LECs do not use their control over numbering resources to their own advantage.[296]

76. *Request for Additional Information.* In order to clarify petitioners' concerns about incumbent LEC NXX code charges and to specify the functions that parties associate with the terms "code assignment," "code activation," and "code opening," the Network Services Division of the Common Carrier Bureau sent requests for information (RFIs) to parties commenting on these issues and invited those parties to meet with Bureau staff. The parties subsequently filed *ex parte* comments that were included in the record of this proceeding.

77. Code Assignment The parties that responded to this request consistently stated that code assignment is performed by the incumbent LEC serving as NPA administrator. Arch

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[291] AirTouch Opposition at 13; Arch Opposition at 3; AT&T Petition at 10-11.

[292] Arch Opposition at 1-2.

[293] AirTouch Opposition at 13.

[294] Arch Opposition at 3, *citing* Letter from Rochester Telephone Corp. to Dennis M. Doyle, Arch Communications Group, Inc., dated Oct. 28, 1996. The term "DID" refers to direct inward dialing capacity. NEWTON'S TELECOM DICTIONARY, 11th Edition, at 181. DID facilities are the DID trunks through which calls are transmitted to the central office.

[295] Arch Opposition at 3.

[296] AT&T Petition at 10.

recommends that the Commission describe this term as "administration of CO codes."[297] This function includes receiving and processing NXX code request forms from requesting telecommunications service providers and assigning NXXs in accordance with the *NXX Assignment Guidelines*.[298] According to AirTouch, BellSouth, TCG, GTE, SBC, and U S WEST, carriers are not generally charged for the assignment of CO codes.[299] Although LECs serving as code administrators have not historically charged carriers for these CO code administration services, BellSouth declares that these costs are "clearly recoverable" as the Commission has determined in the *Local Competition Second Report and Order* that incumbent LECs may charge carriers fees for NXX code assignment as long as one uniform fee is charged for all carriers and the 1996 amendments to the Act provide that the costs of number administration shall be borne by all carriers on a competitively neutral basis.[300] AT&T asserts that code assignment is a record-keeping function for which charges should be *de minimis*.[301] Arch asserts, however, that SNET continues to charge $189.00 for each CO code it assigns in Connecticut.[302]

78. Code Activation U S WEST agrees that code activation includes update of the Bellcore Traffic Routing Administration databases, RDBS and BRIDS, to include new NXX

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[297] *See* Letter from Dennis M. Doyle, Arch, to William F. Caton, FCC, dated August 22, 1997 (Arch August 22 ex parte), at 3.

[298] *See* Letter from Kathleen Q. Abernathy, AirTouch, to Renee Alexander, FCC, dated August 26, 1997 (AirTouch August 26 ex parte), at 2; Arch August 22 ex parte at 3; Letter from Frank S. Simone, AT&T, to William F. Caton, FCC, dated August 20, 1997 (AT&T August 20 ex parte), at 3-4; Response to Request for Information from M. Robert Sutherland and Theodore R. Kingsley, BellSouth, dated August 19, 1997 (BellSouth August 19 ex parte), at 4-5; Letter from Christine M. Crowe, PCIA, to William F. Caton, FCC, dated August 22, 1997 (PCIA August 22 ex parte), at 2; Letter from Link Brown, SBC, to William F. Caton, FCC, dated August 22, 1997 (SBC August 22 ex parte), at 2; Letter from Judith E. Herrman, TCG, to William F. Caton, FCC, dated August 22, 1997 (TCG August 22 ex parte), at 1; Letter from Robert H. Jackson, U S WEST, to William F. Caton, FCC, dated August 13, 1997 (U S WEST August 13 ex parte), at 1; *CO Code Guidelines* at 7-9.

[299] AirTouch August 26 ex parte at 4; BellSouth August 19 ex parte at 5; TCG August 22 ex parte at 1. GTE does not charge fees for any of the CO code assignment areas in Florida and Hawaii that it administers. *See* Letter from W. Scott Randolph, GTE, to William F. Caton, FCC, dated August 21, 1997 (GTE August 21 ex parte), at 2. SBC states that it does not charge any fees to carriers for CO code assignment. SBC August 22 ex parte at 2. U S WEST does not charge any carrier a fee in connection with code assignment functions. U S WEST August 13 ex parte at 2.

[300] BellSouth August 19 ex parte at 5-6, *citing* the *Local Competition Second Report and Order*, 11 FCC Rcd at 19537-38 ¶ 332.

[301] AT&T August 20 ex parte at 2.

[302] Arch August 22 ex parte at 5.

information, although it prefers to use the term "notification of CO codes."[303] BellSouth, AT&T, and Arch state that the terms code activation and code opening are generally used interchangeably within the telecommunications industry.[304] BellSouth reports that carriers may enter the NXX information into the Bellcore databases themselves, or they may negotiate with another company to perform this function on their behalf.[305] SWBT charges $110.00 when it performs the data entry function for other entities.[306] The BRIDS products are used for toll message rating purposes while the RDBS products are used for traffic routing purposes in the public switched telephone network.[307] BellSouth and TCG note that entities are assessed recurring annual charges for record space maintained in the Bellcore databases for each NXX activated by a carrier.[308] GTE and U S WEST assert that they do not charge fees for code activation functions in the areas where they serve as CO administrator.[309]

79. Code Opening AT&T, BellSouth, PCIA, GTE, and TCG generally describe code opening as including the functions that each telecommunications service provider utilizes to update the translation tables in its switches with routing information contained in the Local Exchange Routing Guide (LERG) and to modify other portions of its network to recognize the new or modified NXX data.[310] AT&T states that translation table updates and other system modifications are an essential component of providing telecommunications services, and that without such updates the customers of a telecommunications carrier would not be able to complete calls to the new NXX.[311] AT&T deems these expenses "a cost of doing business" and asserts that carriers have historically not sought to recover costs associated with modifying their

[303] U S WEST August 13 ex parte at 2.

[304] Arch August 22 ex parte at 4; AT&T August 20 ex parte at 2; BellSouth August 19 ex parte at 8.

[305] BellSouth August 19 ex parte at 8.

[306] SBC August 22 ex parte at 3.

[307] BellSouth August 19 ex parte at 8. The RDBS database contains routing information and is used to produce the Local Exchange Routing Guide (LERG). The BRIDS database contains rating information and is used to produce the Terminating Point Master (TPM). *See NXX Assignment Guidelines* at 3.

[308] BellSouth August 19 ex parte at 8; TCG August 22 ex parte at 2.

[309] GTE August 21 ex parte at 3; U S WEST August 13 ex parte at 2.

[310] AT&T August 20 ex parte at 2; BellSouth August 19 ex parte at 11; PCIA August 22 ex parte at 6-7; GTE August 21 ex parte at 1, 4; TCG August 22 ex parte at 2.

[311] AT&T August 20 ex parte at 2.

own systems to recognize new NXXs.[312] TCG and U S WEST state that they neither charge nor are charged by other carriers for code opening functions.[313] Arch states that all incumbent LEC code administrators have stopped the practice of charging Arch for opening or activating NXX codes for Type 2 interconnection.[314] PCIA, however, states that its members continue to be assessed varying charges by incumbent LECs for CO code activation, CO code opening, and CO code "reservation."[315] According to PageNet, BellSouth charged it $8,285.00 to open an NXX code with numbers used for Type 2 interconnection; PTG charged it $30,600.00, $27,600.00, and $24,900 for three NXX codes with Type 2 numbers; and Nevada Bell charged it $2,833.33 to open an NXX code containing numbers used for Type 1 interconnection.[316] AirTouch contends that the California Public Utilities Commission found that "no explicit charge should be imposed on carriers for the costs of opening NXX codes."[317]

80. At the outset, we conclude that, even though the LECs no longer perform code assignment functions,[318] they do continue to perform some code activation and code opening functions. LECs also continue to allocate their own numbers to some paging carriers. Thus, petitions for reconsideration and clarification concerning LEC charges for numbers are still relevant.

81. Initially, we clarify the meanings of the terms code assignment, code activation, and code opening, and the functions associated with each term. Code assignment is the collection, processing, and assignment of NXXs to requesting telecommunications service providers in accordance with the *CO Code Guidelines*. Code activation is the entry of code

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[312] *Id.* at 3.

[313] TCG August 22 ex parte at 2-3; U S WEST August 13 ex parte at 2.

[314] Arch August 22 ex parte at 6.

[315] PCIA August 22 ex parte at 8. Reserved CO codes (NXX codes) are codes that have been identified and set aside by the Code Administrator for some specific use or purpose. The reserved NXX code is not available for assignment but neither has it been officially assigned by the Code Administrator to an entity. *CO Code Guidelines* at 30. Recently, in the *Numbering Resource Optimization Notice*, we sought comment on whether time limits should be imposed on the amount of time a code may be held in reserved status. *Numbering Resource Optimization Notice* at ¶ 49.

[316] Letter from Edward A. Yorkgitis, PageNet, to William F. Caton, FCC, dated September 3, 1997 (PageNet September 3 ex parte), at Attachment 1.

[317] AirTouch August 26 ex parte at 5 n. 4, *citing Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, Opinion,* R. 95-04-044 (Cal. PUC December 20, 1996).

[318] *See* ¶ 5, *supra,* for a discussion of the selection of Lockheed Martin IMS as the NANPA.

assignment information in the BRIDS, the RDBS, and other databases; the maintenance of code assignment information in these databases; and the publication of routing and routing information in output databases including the LERG and the Terminating Point Master (TPM) for distribution to telecommunications service providers. Telcordia Technologies (previously Bellcore) maintains these databases.[319] Code opening is the updating of translation tables, certain switches, and other network elements by each entity interconnecting with the public switched telephone network (PSTN) to allow that entity to route telephone calls and process rate information within its own network.

82. After considering the information provided by the petitioners, we clarify that charging different fees to different providers or categories of providers of telephone exchange service for code assignment, code activation, or code opening violates the Act's section 251(b)(3) nondiscrimination requirement and the Act's section 202(a) prohibition against unreasonable discrimination.[320] The Act's prohibitions against those practices by LECs extends to all telecommunications common carriers, including paging carriers, because all telecommunications common carriers are to be treated equitably, and on a competitively neutral basis.[321] This protection also applies to all fees and functions associated with NXXs, including the assignment of telephone numbers.[322] We find that any LEC charging competing carriers fees for code assignment, code activation, or code opening can do so only if the LEC charges one uniform fee for all carriers, including itself and its affiliates. Such fees must be just and reasonable as required by sections 201(b) and 251(e) of the Act.[323] We also find that AT&T has not demonstrated that its request that incumbent LECs charge themselves retroactively for every NXX code that they have previously allocated to themselves serves any identifiable public interest under the Act. Accordingly, we deny its request that we require such retroactive repayment.

83. In the *Local Competition Second Report and Order* the Commission concluded that the term "nondiscriminatory access to telephone numbers" meant that a LEC providing telephone

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[319] *See id.*, n.32 for a discussion of Bellcore and its acquisition by Science Applications International Corporation (SAIC).

[320] 47 U.S.C. § 251(b)(3); 47 U.S.C. § 202(a); *see Local Competition Second Report and Order*, 11 FCC Rcd at 19537-38 ¶ 332.

[321] *Local Competition Second Report and Order*, 11 FCC Rcd at 19538 ¶ 333; 47 U.S.C. § 251(e).

[322] NXXs can be comprised of Type 1 or Type 2 numbers. NXXs that are comprised of Type 1 numbers may contain wireless and wireline numbers and thus implicate issues involving, for example, sharing of NXXs by two or more carriers. We emphasize here that charges for partial or full NXXs with Type 1 numbers must be reasonable and must be assessed in a nondiscriminatory manner.

[323] 47 U.S.C. §§ 201(b) and 251(e).

numbers must permit competing providers to have access to those numbers that is identical to the access that the LEC provides to itself.[324] We, further, found that telephone companies could not impose recurring charges solely for the use of telephone numbers.[325] In the *Spectrum Order*, we concluded that carriers do not own NXX codes or numbers but rather administer the distribution of these numbers for the efficient operation of the PSTN.[326] This analysis led us to conclude that cellular telephone companies are entitled to reasonable accommodation of their numbering requirements.[327] We also found that telephone companies could impose a reasonable initial connection charge upon cellular carriers as compensation for costs of software updates and other changes associated with the provision of new numbers.[328]

84. Some carriers allege that they continue to be charged recurring fees solely for the use of numbers and unreasonable fees for initial connection costs associated with assigning blocks of Type 1 and Type 2 numbers in violation of the *Local Competition Second Report and Order* and the *Spectrum Order*. Although transfer of CO code assignment functions to the NANPA has rendered allegations of LEC discriminatory charges for CO code assignment moot, we affirm that where LECs provide CO code activation services, charging different CO code activation fees for different providers or categories of providers of telephone exchange service continues to constitute a violation of section 202(a).[329] In addition we note that any fees charged for CO code activation also must be just and reasonable, as required by section 201(b) of the Act.[330]

85. In addition, because the code opening process[331] involves reciprocal obligations among carriers pursuant to section 251(a) of the Act,[332] LECs may not charge CO code opening fees. AT&T's contention that expenses associated with code opening are a cost of doing business

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[324] *Local Competition Second Report and Order*, 11 FCC Rcd at 19446-47 ¶ 106.

[325] *Id.* at 19538, citing *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 59 R.R. 2d 1275, 1284 (1986) (*Spectrum Order*).

[326] *Spectrum Order*, 59 R.R. 2d at 1284.

[327] *Id.*

[328] *Id.*

[329] 47 U.S.C. § 202(a).

[330] 47 U.S.C. § 201(b).

[331] *See supra* ¶ 79 for a description of the code opening process.

[332] 47 U.S.C. § 251(a). "Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."

that mutually benefits all entities utilizing the PSTN and are essential to the ongoing "interconnectiveness" of the telecommunications network is correct. We affirm our finding in the *Local Competition Second Report and Order* that charging different code opening fees for different providers or categories of providers of telephone exchange service constitutes discriminatory access to telephone numbers, and thus violates section 251(b)(3) of the Act. Moreover, we conclude that it also constitutes unjust and unreasonable discrimination in charges that also violates section 202(b) of the Act.[333] Specifically, we conclude that no charges may be assessed for the opening of partial or full NXXs that contain Type 1 or Type 2 numbers. Pursuant to section 201(b) and 202 of the Act, we explicitly extend this protection to all telecommunications common carriers, including paging carriers.

86. Following the dispute resolution process we have adopted for other types of 251(b)(3) nondiscriminatory access issues,[334] we require that, if a dispute arises under section 201(b) of the Act between a LEC providing access to telephone numbers and a competing provider concerning fees for such access, the burden of proof is upon the providing LEC to demonstrate with specificity: (1) that it has provided nondiscriminatory access to telephone numbers, and (2) that the levying of discriminatory or unreasonable charges for CO code assignment or CO code activation are not caused by factors within the control of the providing LEC. We now authorize state regulatory commissions to resolve disputes involving fees charged for the activation of CO codes, including the assignment and activation of numbers,[335] to the extent that these commissions act in a manner that is consistent with our guidelines.

C. Paging and "Telephone Exchange Service"

1. *Background*

87. In the *Local Competition Second Report and Order*, the Commission stated that "[p]aging is not 'telephone exchange service' within the meaning of the Act because it is neither 'intercommunicating service of the character ordinarily furnished by a single exchange' nor

[333] 47 U.S.C. §§ 251(b)(3), 202(b); *Local Competition Second Report and Order*, 11 FCC Rcd at 19537-38 ¶ 332.

[334] *Local Competition Second Report and Order*, 11 FCC Rcd at 19450-51 ¶¶ 114-116.

[335] Because NXXs that contain wireless Type 1 numbers and wireline numbers implicate number sharing issues and we lack sufficient record to decide such matters, we do not specifically address petitioners' concerns regarding fees for Type 1 numbers. We emphasize, however, that charges for Type 1 numbers cannot be unjust, unreasonable, or discriminatory.

'comparable' to such service."[336] As support, the Commission cited section 153(47) of the Act,[337] which states:

> The term 'telephone exchange service' means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.[338]

The Commission concluded that paging is not telephone exchange service as part of the analysis of whether the protections of section 251(b)(3)[339] from discriminatory NXX code opening fees applied to paging carriers.[340] The Commission noted that although paging carriers were not entitled to section 251(b)(3) protection from discriminatory code opening fees, they were increasingly competing with other CMRS providers and would be at an unfair competitive disadvantage if they alone could be charged discriminatory code activation fees.[341] We also concluded that Sections 201 and 202 of the Communications Act prohibited incumbent LECs from assessing unjust, discriminatory, or unreasonable charges for activating CO codes on any carrier or group of carriers, including paging carriers.[342]

2. *Discussion*

88. Several parties contend that paging is telephone exchange service and request the Commission to reconsider its decision in this regard. AirTouch contends that the Commission's conclusion that CMRS paging is not telephone exchange service places paging carriers at a competitive disadvantage vis-a-vis other CMRS providers that provide CMRS paging service in conjunction with their primary service offerings and thus enjoy telephone exchange provider

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[336] *Local Competition Second Report and Order*, 11 FCC Rcd at 19538 ¶ 333, n.700.

[337] 47 U.S.C. § 3(47).

[338] *Id.*

[339] 47 U.S.C. § 251(b)(3).

[340] *Local Competition Second Report and Order*, 11 FCC Rcd at 19537-39 ¶¶ 332-335.

[341] *Id.* at 19538 ¶ 333.

[342] *Id.* at 19537-37 ¶¶ 332-334.

status.[343] AirTouch and PageNet claim that the Commission and different courts have found that CMRS paging companies provide telephone exchange service,[344] and that the Commission's conclusion that paging is not telephone exchange service is not supported by the Act. According to these parties, the 1996 amendments to the Act did not promulgate a narrower definition of telephone exchange service than the 1934 Act; rather, the amendments broadened the definition to include section 153(47)(B) services and functions that are "comparable" to those provided by telephone exchange service providers.[345] In AirTouch's view, the expanded definition includes new technologies and network configurations.[346] AirTouch argues that it is insignificant that CMRS paging service does not constitute an "intercommunicating" service, because one-way CMRS paging service enables reciprocal communications, and real-time interactive two-way voice communication is not required to meet the statutory definition contained in section 3(47).[347]

89. PageNet contends that the reference in section 153(47)(B) to origination and termination of telecommunications services does not preclude paging carriers from meeting the definition of telephone exchange carriers. PageNet states that in construing the phrase "telephone exchange service and exchange access," the Commission interpreted "and" to mean either "and" or "or" so that incumbent LECs must provide interconnection for purposes of transmitting and routing telephone traffic or exchange access traffic or both.[348] PageNet states that the Commission did so to be consistent with the language of the statute and Congressional intent to foster competition in the local exchange market.[349] PageNet argues that a contrary interpretation

[343] AirTouch Petition at 9. AirTouch notes that the Commission concluded that the obligation to provide dialing parity and the duty to provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings pursuant to section 251(b)(3) runs to providers of telephone exchange service and telephone toll service. *Id.* at 7.

[344] *Id.* at 10-12, *citing Public Notice*, 1 FCC 2d 830 (1965); *Tariffs for Mobile Service*, 53 FCC 2d 579 (Common Carrier Bureau 1975); *Cellular Interconnection*, 63 RR 2d 7, 17 (1987); *United States v. Western Electric Co.*, 578 F. Supp. 643, 645 (D.D.C. 1983). *See also* PageNet Petition at 8; AirTouch Reply at 9; PCIA Reply at 4; PageNet Reply at 3.

[345] AirTouch Petition at 12-13; PageNet Petition at 8; PageNet Opposition at 8; PCIA Reply at 4.

[346] AirTouch Petition at 13.

[347] AirTouch Petition at 13-14; *see also* PageNet Petition at 9; PCIA Opposition at 6.

[348] PageNet Petition at 9, *citing Local Competition First Report and Order*, 11 FCC Rcd at 19475.

[349] *Id.*

would arguably release LECs from the obligation to provide services in a nondiscriminatory fashion to cellular, PCS, SMR, and paging.[350]

90. USTA disagrees with the paging-company commenters and maintains that paging services do not fall within the Act's definition of "telephone exchange service" because paging service is not comparable to two-way, switched voice service.[351]

91. We decline at this time to reconsider our decision in the *Local Competition Second Report and Order* that paging carriers do not provide telephone exchange service as described in section 153(47) of the Act. We have already ordered that such companies shall not be charged discriminatory NXX code opening fees; accordingly, the question whether paging carriers provide telephone exchange service does not affect our determination of whether to extend the protection from NXX code opening fees to paging carriers. We stated in the *Local Competition Second Report and Order* that the protection from discriminatory NXX code opening fees was expressly extended to paging carriers under sections 201[352] and 202[353] of the Act.[354] Because that result would not change if we ultimately determined that paging carriers do provide telephone exchange service, reconsideration of this issue is unnecessary in the context of this order.

D. Cost Recovery for Numbering Administration

1. *Background*

92. In section 251(e)(2), Congress mandated that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[355] In the *Local Competition Second Report and Order* the Commission sought to resolve any ambiguity between section 251(e)(2)'s requirement that cost recovery for number administration be borne by all telecommunications carriers on a competitively neutral basis and

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[350] *Id.*; *see also* PageNet Opposition at 8; PageNet Reply at 2.

[351] USTA Opposition at 11-12; USTA Reply at 9.

[352] 47 U.S.C. § 201.

[353] 47 U.S.C. § 202.

[354] *Local Competition Second Report and Order*, 11 FCC Rcd at 19538 ¶¶ 332-333.

[355] 47 U.S.C. § 251(e)(2).

the language in the *NANP Order,*[356] which stated that the gross revenues of each communications provider would be used to compute each provider's contribution to the new numbering administrator.[357]

93. The Commission initially proposed that each telecommunications carrier base its contributions on the gross revenues from its provision of telecommunications services, because that approach would more equitably apportion the burden of cost recovery for numbering administration than would imposing a flat fee contribution upon all telecommunications carriers.[358] The *Local Competition Second Report and Order*, however, found that contributions based on gross revenues would not be competitively neutral for those carriers that purchase telecommunications facilities and services from other telecommunications carriers because the carriers from whom they purchase services or facilities will have included in their gross revenues, and thus in their contributions to number administration, those revenues earned from services and facilities sold to other carriers. Therefore, to avoid such an outcome, the Commission required all telecommunications carriers to subtract from their gross telecommunications services revenues expenditures for all telecommunications services and facilities that had been paid to other telecommunications carriers.[359] This method is commonly referred to as the "net revenue allocator."

2. Discussion

94. A number of parties object to the formula for recovering the costs of numbering administration adopted in the *Local Competition Second Report and Order*, asserting that the "net revenue allocator" is not competitively neutral because it places a larger share of the costs for numbering administration on facilities-based carriers and incumbent LECs,[360] thereby disproportionately burdening those entities. Bell Atlantic states that the Commission should require each telecommunications service provider to contribute to cost recovery based upon its gross revenues.[361] SBC suggests that the Commission adopt a new method of cost allocation

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[356] *NANP Order*, 11 FCC Rcd 2588 at 2628-29 ¶¶ 94-100.

[357] *Local Competition Second Report and Order*, 11 FCC Rcd at 19540-41 ¶¶ 342-343.

[358] *NANP Order*, 11 FCC Rcd 2588 at 2628-29 ¶¶ 94-100.

[359] 47 C.F.R. § 52.17; *Local Competition Second Report and Order*, 11 FCC Rcd at 19541 ¶ 343.

[360] Ameritech Opposition at 13; BellSouth Petition at 6; NYNEX Petition at 2-3; SBC Petition at 19; USTA Petition at 5; GTE Opposition at 14; U S WEST Opposition at 3, 8.

[361] Bell Atlantic Opposition at 5-6.

based upon elemental access lines (EAL).[362] Other parties propose cost allocation formulas based on retail revenues. For example, NYNEX and GTE recommend that the Commission recover numbering administration costs by placing a uniform surcharge on retail rates.[363] USTA and U S WEST argue that the Commission should base its assessments of number administration cost recovery on each carrier's gross retail revenues from telecommunications services.[364] In the alternative, U S WEST requests that the Commission allow facilities-based carriers to flow through to non-facilities-based carriers the numbering administration costs "the facilities-based carriers are assigned as a result of the revenues generated from this use of their network."[365] Lastly, BellSouth asserts that the Commission should utilize retail revenues as its standard and "require that both payments made to other carriers as well as payments received from other carriers be subtracted from gross revenues."[366]

95. AT&T and five other parties state that the Commission should not reconsider its cost allocation formula.[367] MCI states that it supports the Commission's ruling because "to require or to allow the calculation to be based in part on expenditures for services such as access would effectively force MCI to pay twice for access, once in payment to incumbent LECs and a second time in the allocation of costs due to inclusion of access in retail costs."[368] MFS asserts that a surcharge based upon gross retail revenues, as urged by BellSouth, NYNEX and USTA, would be more difficult to implement because carriers often "do not have the information needed to determine which of their revenues are "retail" and which are "wholesale," because they do not always know whether a customer intends to resell the services it purchases."[369]

96. Although the Commission has recently concluded in the *Contributor Reporting Requirements Order* that the NANP cost recovery allocator should be changed from the "net

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[362] *See* SBC Petition at 20.

[363] GTE Opposition at 15; NYNEX Petition at 4-5.

[364] USTA Reply at 7; U S WEST Opposition at 8.

[365] U S WEST Opposition at 8.

[366] BellSouth Petition at 7.

[367] AT&T Opposition at 16-17; MCI Opposition at 7; MFS Opposition at 10; NCTA Opposition at 6; Sprint Opposition at 8-9; and TRA Opposition at 5-6.

[368] MCI Opposition at p. 7.

[369] MFS Opposition at 9-10.

revenue" allocator to the "end user" allocator,[370] LECs are required to recover costs under the "net revenue" allocator until February, 2000.[371] For the reasons below, we affirm our conclusion that the net revenues allocator is competitively neutral.

97. In section 251(e)(2), Congress granted the Commission explicit discretion to select from among competitively neutral cost recovery methodologies, discretion the Commission exercised when it chose the net revenue allocator as the cost recovery methodology for numbering administration. The net revenue allocator is competitively neutral because, when it is included in the prices of services, it will not give one service provider an appreciable, incremental cost advantage over another service provider, regardless of whether the provider is facilities-based or a non-facilities-based reseller. The net revenue allocator will distribute numbering administration costs to each carrier in proportion to net revenues (the gross revenues of both wholesale and retail services less payments to other carriers for the purchase of inputs from other telecommunications providers); thus all carriers will have to mark-up the prices of services they sell by approximately the same amounts to recover these costs. Further, the net revenue allocator is neutral because allocating numbering administration costs in proportion to end-user revenues will prevent the shared costs from disparately affecting the ability of carriers to earn a normal return. Because carriers' allocations of the shared costs will vary directly with their end-user revenues, their share of the regional database costs will increase in proportion to their customer base. Thus, no carrier's portion of the shared costs will be excessive in relation to its expected revenues, and its allocated share will only increase as it increases its revenue stream.[372] Thus, because the net revenue allocator is competitively neutral, the Commission has satisfied the directive of section 251(e)(2), and no reconsideration of this issue is required.

98. Some commenters argue that the net revenue method is biased, because they mistakenly conclude that facilities-based carriers would not be permitted to flow through to non-facilities-based carriers the numbering administration costs that the facilities-based carriers incur. NYNEX, in particular, bases its argument against the net revenue methodology on the incorrect

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[370] *Contributor Reporting Requirements Order, supra,* n.25, at ¶¶ 59-70.

[371] *Id.* at ¶ 70.

[372] The neutrality of the net revenue allocator is illustrated by the following example. Assume a facilities-based Carrier A sells $1 million of services to end users and $1 million to non-facilities-based Carrier B and that the cost recovery fee is 1%. Under the net revenue allocator Carrier A would collect $10,000 from its end users and $10,000 from Carrier B. If Carrier B also sells $2 million in services it would pay $10,000 in fees directly to the cost administrator and $10,000 to Carrier A who would include these costs in the price of inputs it sells to Carrier B. Carrier A then would "flow through" these fees to the number administrator. Under the net revenue allocator each carrier pays 1% of its gross revenues for number administration or $10,000 per $1 million dollars of sales. Moreover, the less gross revenue a carrier has, the less it pays in numbering administration. Thus, it is neutral with respect to size and ability to earn revenues.

assumption that the Commission's rules prohibit facilities-based carriers that provide wholesale telecommunications services to non-facilities-based carriers from marking up their wholesale prices to recover numbering administration costs.[373] NYNEX admits that permitting such flow through would result in neutrality, but asserts that this is precluded by the *Local Competition Second Report and Order*. Contrary to NYNEX's assertion, nothing in the *Local Competition Second Report and Order* prohibits facilities-based providers from flowing numbering administration costs through to the non-facilities-based providers. The paragraphs in the *Local Competition First Report and Order* upon which NYNEX relies to develop its argument are inapposite because they refer to the recovery of universal service funds, not the recovery of numbering administration costs. For numbering administration cost recovery, the statutory standard for wholesale prices is the retail price less "costs that will be avoided" by selling at wholesale.[374] Numbering administration costs are legitimate costs that cannot be avoided as a result of selling at wholesale prices. Thus, facilities-based providers may recover an appropriate portion of numbering administration costs through wholesale charges for services they sell to resellers. Similarly, Commission rules present no barrier to LEC recovery of an appropriate portion of numbering administration costs through the access charges the LECs collect from IXCs. Finally, number administration is a legitimate cost that facilities-based providers may recover when they sell wholesale services to non-facilities-based service providers. As a consequence, there is no basis for assuming, as NYNEX and U S WEST do, that the states would not allow LECs to recover an appropriate share of numbering administration costs in their charges for unbundled network elements.[375]

99. Several of the commenting parties propose alternative allocators which they assert are superior to the net revenue method. We conclude that not all of the proposals are

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[373] NYNEX Petition at 4-5, *citing Local Competition First Report and Order*, 11 FCC Rcd at 15506, 15861, 15868-69 ¶¶ 4-5, 713, 728-732; NYNEX Reply at 9. Ameritech, Bell Atlantic, and BellSouth generally support the NYNEX's view and argue for alternative allocation methods. Ameritech Opposition at 13; Bell Atlantic Opposition at 5; BellSouth Reply at 8.

[374] 47 U.S.C. § 252(d)(3).

[375] Many of the arguments petitioners made on reconsideration were also made before the Eighth Circuit in *California v. FCC*. Appellants argued that the Commission's cost recovery formula would violate the Act's requirement that it be competitively neutral if state commissions refused to allow LECs to flow through their numbering administration costs in the prices they charge their competitors for telecommunications services and facilities. The Court of Appeals stated that the parties appeared to agree that if they were allowed to include their numbering administration costs in the prices that the charged their competitors for telecommunications services and facilities, the cost recovery method proposed by the Commission would be valid. *California v. F.C.C.*, 124 F.3d at 943. The Court ruled that the petitioners' contentions with respect to the validity of the Commission's numbering administration cost recovery rule were speculative and therefore, not ripe for review because no state had concluded that LECs could not include numbering administration charges in the prices for services or facilities sold to other telecommunications service providers. *Id.* at 944.

competitively neutral. Bell Atlantic's gross revenue approach, as we previously discussed, is not competitively neutral because it would result in double recovery. SBC's EAL allocator also appears to be non-neutral because it would treat local, intraLATA toll, and interLATA toll services equally in allocating costs. Because these services are generally priced differently, allocating costs on the basis of elemental access lines would not appear meet our definition of neutrality, since lower priced services would pay proportionately more than higher priced services. Allocating numbering costs on the basis of retail revenues or rates as Bellsouth, NYNEX, GTE, USTA, and U S WEST propose is an improvement over many of the other proposals. Nonetheless, retail revenue or rate allocation is not neutral because it excludes certain types of revenues, such as those that result when a carrier purchases telecommunications inputs for its own internal uses. Competitive neutrality requires that the allocator be as broad-based as possible, *i.e.*, applied to all sources of revenues.

3. 1998 Biennial Review - Contributor Reporting Requirements Order.

100. Although we have affirmed our conclusion in the *Local Competition Second Report and Order* that the net revenues allocator is competitively neutral, we also recognized that under our existing rules, the filing and reporting requirements associated with the cost recovery mechanism for NANP administration[376] differ from the filing and reporting requirements associated with the Telecommunications Relay Services (TRS) Fund,[377] federal universal service support mechanisms,[378] and the cost recovery mechanism for long-term local number portability (LNP) administration.[379] Prior to our adoption of the *Contributor Reporting Requirements Order*, carriers and certain other providers of telecommunications services had to satisfy these various requirements by filing different forms or worksheets, containing similar but not identical information, at different times, at different intervals, and in different locations. Accordingly, in order to lessen the regulatory burden on all telecommunications carriers, on July 14, 1999, the Commission adopted the *Contributor Reporting Requirements Order*, to consolidate and streamline these six carrier reporting requirements into one report. The *Contributor Reporting Requirements Order* concludes that, in order to include cost recovery for the administration of the North American Numbering Plan in the unified report, the NANP cost recovery allocator should be changed from the "net revenue" allocator to the equally competitively neutral "end user" allocator.[380] As we mention above, this requirement will begin in March, 2000.[381]

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[376] 47 C.F.R. §§ 52.1 *et seq.*

[377] 47 C.F.R. §§ 64.601 *et seq.*

[378] 47 C.F.R. §§ 54.1 *et seq.*, 69.1 *et seq.*

[379] 47 C.F.R. §§ 52.21 *et seq.*

[380] *Contributor Reporting Requirements Order* at ¶¶ 59-70.

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

101. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in *Notice of Proposed Rulemaking* in CC Docket No. 96-98.[382] The Commission sought written public comment on the proposals in this *NPRM*, including comment on the IRFA.[383] In addition, a Final Regulatory Flexibility Analysis was incorporated in the *Local Competition Second Report and Order*.[384] Appendix C sets forth the Supplemental Regulatory Flexibility Analysis on the *Local Competition Second Report and Order, Third Order on Reconsideration* in CC Docket No. 96-98.

B. Final Paperwork Reduction Act Analysis

102. The *Notice of Proposed Rulemaking* from which the *Local Competition Second Report and Order, Third Order on Reconsideration and Memorandum Opinion and Order* issues proposed changes to the Commission's information collection requirements. As required by the Paperwork Reduction Act of 1995, the Commission sought comment from the public and from OMB on the proposed changes.[385] This *Third Order on Reconsideration and Memorandum Opinion and Order* contains several new information collections, which have been submitted to OMB for approval. Implementation of these information collections is subject to OMB approval, as prescribed by the Paperwork Reduction Act.

V. ORDERING CLAUSES

103. Accordingly, IT IS ORDERED that pursuant to authority contained in Sections 1, 4(i) and (j), 201-205, 218, 220, 251 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201-205, 218, 220, 251 and 403, Parts 51 and 52 ARE AMENDED as set forth in Appendix B.

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[381] *Id.* at ¶ 70.

[382] *Local Competition NPRM*, n.56, *supra*, 11 FCC Rcd at 14265-66, ¶¶ 274-87.

[383] *Id.* at 14266, ¶ 286.

[384] *Local Competition Second Report and Order*, 11 FCC Rcd at 19542-60, ¶¶ 346-98.

[385] *Local Competition NPRM*, 11 FCC Rcd at 14266, ¶ 288.

104. IT IS FURTHER ORDERED that the relief requested in the petition for declaratory ruling filed by the Massachusetts Department of Public Utilities is GRANTED to the extent set forth herein.

105. IT IS FURTHER ORDERED that the petitions for reconsideration and clarification ARE GRANTED to the extent indicated herein and otherwise ARE DENIED.

106. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Local Competition Second Report and Order, Third Order on Reconsideration and Memorandum Opinion and Order* including the associated Supplemental Regulatory Flexibility Analyses to the Chief Counsel for Advocacy of the Small Business Administration.

107. IT IS FURTHER ORDERED, pursuant to 47 C.F.R. section 1.427, that the decisions and rules adopted herein SHALL BE EFFECTIVE thirty (30) days after publication of this *Local Competition Second Report and Order, Third Order on Reconsideration and Memorandum Opinion and Order*, or a summary thereof, in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A - LIST OF PARTIES

Petitions for Reconsideration/Clarification, filed by October 7, 1996:

Airtouch Paging and PowerPage (joint comments) (Airtouch)
Ameritech
AT&T Corp. (AT&T)
Beehive Telephone Company, Inc. (Beehive)
BellSouth Corporation and BellSouth Telecommunications (BellSouth),
Cox Communications, Inc. (Cox)
Excell Agent Services, Inc. (Excell)
GTE Service Corporation GTE)
Jan David Jubon/Jubon Engineering, P.C. (Jubon)
MFS Communications Co., Inc. (MFS)
MCI Telecommunications Corp. (MCI)
New York State Dept. of Public Service (NYDPS)
NYNEX Telephone Companies (NYNEX)
Omnipoint Communications, Inc. (Omnipoint)
Paging Network, Inc. (PageNet)
Pennsylvania Public Utility Commission (PaPUC)
Rural Telephone Coalition (RTC)
SBC Communications Inc. filed on behalf of its subsidiaries, Southwestern Bell Telephone Company (SWBT) and Southwestern Bell Mobile Systems (SWBMS) (SBC)
Teleport Communications Group, Inc. (TCG)
U.S. Telephone Association (USTA)
The Washington Post Company (Washington Post)

Oppositions, filed by November 20, 1996:

Airtouch Communications Inc. (AirTouch)
Ameritech
Arch Communications Group, Inc. (Arch)
AT&T
Bell Atlantic (Bell Atlantic)
Bell Atlantic NYNEX Mobile, Inc. (BANM)
BellSouth
Communications Venture Services, Inc. (CVS)
Cox
GTE
MCI
MFS

National Cable Television Association, Inc. (NCTA)
Public Utilities Commission of Ohio (PUCO)
Pacific Telesis Group (PTG)
PaPUC
Personal Communications Industry Association (PCIA)
Roseville Telephone Company
SBC
Southern New England Telephone Company (SNET)
Sprint Corporation (Sprint)
Telco Planning, Inc. (Telco Planning)
Telecommunications Resellers Association (TRA)
TCG
USTA
U S WEST, Inc. (U S WEST).

Replies, filed by December 5, 1996:

Airtouch
Ameritech
AT&T
BellSouth
Cox
GTE
MCI
MFS
NYNEX
Omnipoint
Paging Network
PCIA
SBC
TCG
USTA.

Parties filing comments in response to the Massachusetts DPU Petition:

AT&T
BANM
New England Cable Television Association, Inc. (NECTA)
PageNet
ProNet, Inc. (ProNet)
Southwestern Bell Mobile Systems, Inc. (SWBMS)
TCG

Parties filing comments in response to the NYDPS Petition for Stay:

MCI Telecommunications Corporation (MCI)
Nextel Communications, Inc. (Nextel)
Bell Atlantic
Massachusetts Department of Public Utilities (DPU)

Parties filing reply comments to the NYDPS Petition for Stay:

Nextel Communications, Inc. (Nextel)
New York Department of Public Service (NYDPS)

Parties filing comments to the NYDPS Application Petition for Review:

Massachusetts Department of Public Utilities (DPU)
State of Minnesota Public Utilities Commission
State of Maine Public Utilities Commission

APPENDIX B

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

Title 47 of the CFR, Part 52 is amended as follows:

PART 52 - NUMBERING

1. The authority citation for Part 52 continues to read as follows:

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. §§ 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 153, 154, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332 unless otherwise noted.

2. Remove § 52.19(c)(3)(iii)

3. Revise § 52.19(c)(3) to read as follows:

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(c) (3)***

(i) No area code overlay may be implemented unless all central office codes in the new overlay area code are assigned to those entities requesting assignment on a first-come, first-serve basis, regardless of the identity of, technology used by, or type of service provided by that entity. No group of telecommunications carriers shall be excluded from assignment of central office codes in the existing area code, or be assigned such codes only from the overlay area code, based solely on that group's provision of a specific type of telecommunications service or use of a particular technology; and,

(ii) No area code overlay may be implemented unless there exists, at the time of implementation, mandatory ten-digit dialing for every telephone call within and between all area codes in the geographic area covered by the overlay area code.

APPENDIX C

SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in CC Docket No. 96-98.[386] The Commission sought written public comment on the proposals in this *NPRM*, including the IRFA.[387] In addition, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Local Competition Second Report and Order*. That FRFA conformed to the RFA, as amended.[388] This present Supplemental FRFA also conforms to the RFA, as amended.

1. Need for and Objectives of the Local Competition Second Report and Order, Third Order on Reconsideration and Memorandum Opinion and Order and the Rules Adopted Herein

2. The need for and objectives of the rule revisions adopted in the *Local Competition Second Report and Order, Third Order on Reconsideration and Memorandum Opinion and Order* are the same as those discussed in the FRFA in the *Local Competition Second Report and Order*. In general, these rules implement the Congressional goal of opening local exchange and exchange access markets to competition by eliminating certain operational barriers to competition. The Commission promulgated rules pursuant to section 251(b)(3), (c)(5), and (e)(1) of the Act in the *Local Competition Second Report and Order*. In this *Third Order on Reconsideration and Memorandum Opinion and Order*, we grant in part and deny in part several of the petitions filed for reconsideration and/or clarification of the *Local Competition Second Report and Order*.[389] We eliminate our requirement that an area code overlay plan include the assignment of at least one central office code (NXX code) to each new telecommunications service provider that had no NXX codes in the area code 90 days before introduction of the new area code. We grant the Petition for Declaratory Ruling filed by the Commonwealth of Massachusetts Department of Public Utilities to the extent that the Commission clarifies that state commissions may "take-back" or "grandfather" Type 2 wireless numbers when an area code undergoes a geographic split, subject to certain conditions. We also clarify the definitions of the terms "code assignment," "code activation," and "code opening"; find that LECs are to assess no fees for opening NXX

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[386] *Id.* at 14265-66, ¶¶ 274-87.

[387] *Id.* at 14266, ¶ 286.

[388] *See* 5 U.S.C. § 604. The RFA, *see* 5 U.S.C. § 601 *et. seq.* has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[389] *See supra* at part III.

codes; and authorize state regulatory commissions to resolve issues involving fees charged for the activation of NXX codes. Finally, we affirm that our numbering administration cost recovery formula is competitively neutral and that we will retain this method for the current funding year, but note that in a separate proceeding we have concluded that, in order to lessen the regulatory burden on all telecommunications carriers, we have consolidated and streamlined six carrier reporting requirements, including numbering administration cost recovery, into one report. In order to include cost recovery for the administration of the North American Numbering Plan in the unified report, we concluded that the NANP cost recovery allocator should be changed to be consistent with the other reporting requirements. This requirement will begin in the billing cycle beginning March 2000.

2. Summary of Significant Issues Raised in Response to the FRFA

3. In the FRFA, the Commission concluded that rules set forth in the *Local Competition Second Report and Order* would have a significant impact on a number of entities, many that could be small business concerns. The rules we adopted regarding numbering administration access apply to all LECs. These rules also affect interexchange carriers, providers of cellular, broadband PCS, and geographic area 800 MHz and 900 MHz specialized mobile radio services, including licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or under section 90.629 of the Commission's rules.[390] Our rules apply to SMR licensees only if they offer real-time, two-way voice service that is interconnected with the public switched network. Additional business entities affected by the rules include providers of telephone toll service, providers of telephone exchange service, independent operator services providers, independent directory assistance providers, independent directory listing providers, independent directory database managers, and resellers of these services.

4. We recognized that our rules might have significant economic impacts on a substantial number of small businesses. We discussed the reporting requirements imposed in the *Local Competition Second Report and Order*. Finally, we discussed the steps taken to minimize the impact on small entities, consistent with our stated objectives. We concluded that our actions in the *Local Competition Second Report and Order* would benefit small entities by facilitating their entry into the local exchange and exchange access markets.

5. In the petitions for reconsideration and clarification considered in this *Third Order on Reconsideration and Memorandum Opinion and Order*, we received no argument or comment specifically directed to the FRFA. In making the determinations reflected in this *Third Order on*

[390] 47 C.F.R. § 90.629.

Reconsideration and Memorandum Opinion and Order, however, we have considered the impact of actions on small entities.[391]

3. Description and Estimate of the Number of Small Entities Affected by this Second Order on Reconsideration

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by rules.[392] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[393] The RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act,[394] unless the Commission has developed one or more definitions that are appropriate to its activities.[395] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[396]

7. We have included small incumbent LECs in this Supplemental RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[397] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[398] We have therefore included

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[391] *See* section 4 of this Supplemental FRFA, *infra*.

[392] 5 U.S.C. §§ 603(b)(3), 604(a)(3).

[393] 5 U.S.C. § 601(6).

[394] 15 U.S.C. § 632.

[395] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

[396] 15 U.S.C. § 632.

[397] 5 U.S.C. § 601(3).

[398] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *Implementation of the Local*

small incumbent LECs in this Supplemental FRFA, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

8. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report.[399] According to data in the most recent report, there are 3,528 interstate carriers.[400] These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

9. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.[401] Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

10. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."[402]

Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

[399] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[400] *Id.*

[401] 13 CFR § 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. *See also* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

[402] 13 CFR § 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (Aug. 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

11. **Total Number of Telephone Companies Affected.** The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[403] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."[404] For example, a reseller that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the rules, herein adopted.

12. **Wireline Carriers and Service Providers.** The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[405] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[406] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the rules, herein adopted.

a. *Incumbent Local Exchange Carriers.* There are two principle providers of local telephone service; ILECS and competing local service providers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). Neither the Commission nor the SBA has developed a definition specifically directed toward

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[403] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (*1992 Census*).

[404] *See generally* 15 U.S.C. § 632(a)(1).

[405] *1992 Census, supra*, at Firm Size 1-123.

[406] 13 CFR § 121.201, SIC code 4813.

small incumbent LECs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,410 companies reported that they were engaged in the provision of local exchange services.[407] Although it seems certain that some of these carriers are not independently owned and operated or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of small incumbent LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small incumbent LECs that may be affected by the decisions and rules adopted in this Order.

b. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[408] According to the most recent *Trends in Telephone Service* data, 151 carriers reported that they were engaged in the provision of interexchange services.[409] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 151 small entity IXCs that may be affected by the rules, herein adopted.

c. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.[410] According to the most recent *Trends in Telephone Service* data, 147 carriers reported that they were engaged in the provision of competitive local exchange services.[411] We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of

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[407] Federal Communications Commission, *CarrierLocator: Interstate Service Providers*, Fig. 1 (Jan. 1999) (*Carrier Locator Report*).

[408] 13 CFR § 121.201, SIC code 4813.

[409] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[410] 13 CFR 121.201, SIC code 4813.

[411] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 147 small entity CAPs that may be affected by the rules, herein adopted.

d. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[412] According to the most recent *Trends in Telephone Service* data, 32 carriers reported that they were engaged in the provision of operator services.[413] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 32 small entity operator service providers that may be affected by the rules, herein adopted.

e. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[414] According to the most recent *Trends in Telephone Service* data, 509 carriers reported that they were engaged in the provision of pay telephone services.[415] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 509 small entity pay telephone operators that may be affected by the rules, herein adopted.

f. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.[416] According to the most recent *Trends in Telephone*

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[412] 13 CFR § 121.201, SIC code 4813.

[413] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[414] 13 CFR § 121.201, SIC code 4813.

[415] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[416] 13 CFR § 121.201, SIC code 4813.

Service data, 358 reported that they were engaged in the resale of telephone service.[417] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 358 small entity resellers that may be affected by the rules, herein adopted.

g. *800 and 800-Like Service Subscribers.*[418] Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.[419] According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 7,692,955 small entity 800 subscribers, fewer than 7,706,393 small entity 888 subscribers, and fewer than 1,946,538 small entity 877 subscribers may be affected by the rules, herein adopted.

13. **Wireless and Commercial Mobile Services**

a. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[420] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[421] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition,

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[417] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[418] We include all toll-free number subscribers in this category, including 888 numbers.

[419] FCC, CCB Industry Analysis Division, *FCC Releases, Study on Telephone Trends*, Tbls. 21.2, 21.3 and 21.4 (February 19, 1999).

[420] 13 CFR § 121.201, SIC code 4812.

[421] *1992 Census, Series UC92-S-1*, at Table 5, SIC code 4812.

according to the most recent *Trends in Telephone Service* data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[422] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small cellular service carriers that may be affected by the rules, herein adopted.

b. *220 MHz Radio Service -- Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHZ Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[423] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[424] Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

c. *220 MHz Radio Service -- Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[425] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[426] The SBA has approved these definitions.[427] An auction of Phase

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[422] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[423] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) code 4812.

[424] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[425] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291-295 (1997).

[426] *Id.*, 12 FCC Rcd at 11068-69, ¶ 291.

II licenses commenced on September 15, 1998, and closed on October 22, 1998.[428] Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.[429] A re-auction of the remaining, unsold licenses is likely to take place during calendar year 1999.

d. *Private and Common Carrier Paging.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[430] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service* data, 137 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[431] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 137 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

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[427] *See* Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[428] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

[429] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

[430] 13 CFR § 121.201, SIC code 4812.

[431] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

e. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,[432] and the most recent *Trends in Telephone Service* data shows that 23 carriers reported that they were engaged in the provision of SMR dispatching and "other mobile" services.[433] Consequently, we estimate that there are fewer than 23 small mobile service carriers that may be affected by the rules, herein adopted.

f. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[434] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[435] These regulations defining "small entity'' in the context of broadband PCS auctions have been approved by the SBA.[436] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[437] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

g. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband

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[432] 13 CFR § 121.201, SIC code 4812.

[433] Trends in Telephone Service, Table 19.3 (February 19, 1999).

[434] *See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* Report and Order, FCC 96-278, WT Docket No. 96-59, paras. 57- 60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); *see also* 47 CFR § 24.720(b).

[435] *See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* Report and Order, FCC 96-278, WT Docket No. 96-59, ¶ 60 (1996), 61 FR 33859 (Jul. 1, 1996).

[436] *See, e.g., Implementation of Section 309(j) of the Communications Act -- Competitive Bidding,* PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

[437] FCC News, *Broadband PCS, D, E and F Block Auction Closes,* No. 71744 (released Jan. 14, 1997).

PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

h. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[438] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[439] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[440] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

i. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[441] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[442] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

j. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[443] In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought. For geographic area licenses in the 900 MHz SMR

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[438] The service is defined in Section 22.99 of the Commission's Rules, 47 CFR § 22.99.

[439] BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 CFR §§ 22.757 and 22.759.

[440] 13 CFR § 121.201, SIC code 4812.

[441] The service is defined in Section 22.99 of the Commission's Rules, 47 CFR § 22.99.

[442] 13 CFR § 121.201, SIC code 4812.

[443] 47 CFR § 90.814(b)(1).

band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

4. Summary Analysis of the Projected Reporting, Recordkeeping and Other Compliance Requirements and Steps Taken to Minimize the Significant Economic Impact of this *Third Order on Reconsideration and Memorandum Opinion and Order* on Small Entities, Including the Significant Alternatives Considered and Rejected

14. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *Local Competition Second Report and Order* the Commission authorized state commissions to perform the tasks of implementing new area codes subject to Commission guidelines. If a state commission chooses initiate and plan area code relief, it must inform the NANP Administrator of the functions the commission will perform. The Commission also noted that all telecommunications carriers were to contribute to the costs of establishing numbering administration. In this *Third Order on Reconsideration and Memorandum Opinion and Order* we eliminated our provision that a state commission may choose to implement an all-service area code overlay plan only when the plan included the assignment, during the 90-day period preceding the introduction of that overlay, of at least one NXX code to each new entrant telecommunications service provider.

15.. *Steps Taken to Minimize Significant Economic Impact on Small Entities.* In this *Order* we eliminated our requirement that each new entrant telecommunications service provider that has no NXXs receive at least one NXX code because we found that it created uncertainty in the area code relief planning process and might spur depletion of numbering resources. This uncertainty and depletion might have placed a significant economic and administrative burden upon small carriers, incumbent LECs, and competing service providers seeking to compete in the local telecommunications exchange market. We also have allowed wireless carriers, which may include small business entities, to grandfather numbers in the event of a geographic area code split. This gives wireless carriers more time to educate their customers. Moreover, as wireless companies must physically reprogram the telephones in the area receiving the new area code, our policy allows these companies to minimize this economic impact by allowing to forbear from this requirement. In addition, we emphasized that LECs were not to charge discriminatory fees for NXX code assignment, NXX code activation, or NXX code opening. This should benefit small entities because we believe that such fees would disproportionately burden small carriers or business entities seeking to compete with incumbent LECs and other established carriers.

5. Report to Congress

16. The Commission will send a copy of this *Third Order on Reconsideration and Memorandum Opinion and Order*, including this Supplemental FRFA, in a report to be sent to